

Message

From: Srinivasan, Gautam [Srinivasan.Gautam@epa.gov]
Sent: 1/25/2021 7:38:14 PM
To: Fugh, Justina [Fugh.Justina@epa.gov]
CC: Payne, James (Jim) [payne.james@epa.gov]; Marks, Matthew [Marks.Matthew@epa.gov]; Clarke, Victoria [clarke.victoria@epa.gov]
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks again!

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(202) 564-5647 (o)
(202) 695-6287 (c)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 2:23 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Gautam,
See my notes below:

- Even if Melissa is recused from a case, can we share with her publicly available information about it? I think the answer is yes.
JUSTINA: yes, you may share and she may hear publicly available information.
- Variant- Melissa is recused from the ACE litigation. The decision in the ACE litigation vacated a regulation. That regulation is also the subject of a different case (case Y) that Melissa is NOT recused from. Could we say to Melissa- "The ACE decision vacated regulation X. In light of that vacatur, should we stop defending case Y?"
JUSTINA: I had to insert a clarification just to be sure I'm following your hypothetical. Under the federal ethics rules, you may discuss Case Y with Melissa. My prudential advice to her, however, will be to consider seeking the consent of Massachusetts to ensure that she may work on "substantially related" specific party matters pursuant to MA bar rule 1.11.
- Could we say anything more? If Melissa said, "That's interesting. Tell me why the reasoning of the ACE decision leads to that conclusion in case Y," could we answer?
JUSTINA: To be clear, in this hypo, there is already a decision that is publicly available, correct? If so, then yes, you may engage with her on this question because she is not discussing the merits of the ACE case but rather applying the decision made by the court to EPA's strategy in a different case.

Justina Fugh | Director, Ethics Office | Office of General Counsel | US EPA | Mail Code 2311A | Room 4308 North, William Jefferson Clinton Federal Building | Washington, DC 20460 (for ground deliveries, use 20004 for the zip code) | phone 202-564-1786 | fax 202-564-1772

From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 25, 2021 1:37 PM
To: Fugh, Justina <Fugh.Justina@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks much. Final question/variant. Even if Melissa is recused from a case, can we share with her publicly available information about it? I think the answer is yes. Variant- Melissa is recused from the ACE litigation. The decision in the ACE litigation vacated a regulation. That regulation is also the subject of a different case that Melissa is NOT recused from. Could we say to Melissa- "The ACE decision vacated regulation X. In light of that vacatur, should we stop defending case Y?" Could we say anything more? If Melissa said, "That's interesting. Tell me why the reasoning of the ACE decision leads to that conclusion in case Y," could we answer?

Sorry to get so granular.

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(202) 564-5647 (o)

(202) 695-6287 (c)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Monday, January 25, 2021 1:19 PM
To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>
Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Gautam,

When Lisa Jackson became the EPA Administrator, she came to us from the State of New Jersey. At the time, there was a "little" case called State of New Jersey v. EPA, but we anticipated that the new Obama Administration would not want to pursue it in the Supreme Court. So the impartiality determination we wrote allowed her to make the policy decision to cease pursuing it *without ever discussing the merits of the case*. That's the same analysis we applied to the situation for Melissa except that, unlike Lisa Jackson, Melissa is an attorney subject to her own bar restrictions, notably 1.6 (duty of confidentiality), 1.9 (duty to former client) and 1.11 (obligations of former government officials). She cannot discuss the merits of any case in which she previously participated because of her bar obligations. But she can make a policy decision about whether or not to proceed with the litigation of that case.

Justina

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From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>
Sent: Monday, January 25, 2021 12:58 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>

Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Thanks. And one other clarification, if you please. The impartiality letter says that Melissa can participate in “policy determinations related to these cases.” I had thought that meant Melissa could, say, participate in discussions about how EPA will regulated power plants, even if she is recused from the ACE litigation. But your email below says Melissa can participate in “policy decisions *about* that litigation” and lists a decision to stay as an example.

Assuming the formulation in your email is right, is there anything more you can provide on the scope of “policy decisions about” litigation? A question of whether to stay a case may involve discussion of the merits of the case. I’m unclear on how exactly to implement this aspect. Thanks again!

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(202) 564-5647 (o)

(202) 695-6287 (c)

From: Fugh, Justina <Fugh.Justina@epa.gov>

Sent: Monday, January 25, 2021 12:47 PM

To: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>

Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hogan, Stephanie <Hogan.Stephannie@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>

Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Gautam,

Yes, please don’t send it to them.

Justina

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From: Srinivasan, Gautam <Srinivasan.Gautam@epa.gov>

Sent: Monday, January 25, 2021 12:46 PM

To: Fugh, Justina <Fugh.Justina@epa.gov>

Cc: Payne, James (Jim) <payne.james@epa.gov>; Marks, Matthew <Marks.Matthew@epa.gov>; Hogan, Stephanie <Hogan.Stephannie@epa.gov>

Subject: RE: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi Justina- Quick follow up on this. We have prepared a written summary/analysis of the ACE litigation (American Lung Association v. EPA). Both Massachusetts and NRDC were parties in the case. Given that, it seems like we should not be sending the summary to them. Do I have that right?

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(202) 564-5647 (o)

(202) 695-6287 (c)

From: Fugh, Justina <Fugh.Justina@epa.gov>
Sent: Thursday, January 21, 2021 9:12 PM
To: OGC HQ ADDs <OGC_HQ_ADDs@epa.gov>; OGC RCs and DRCs <OGC_RCs_and_DRCs@epa.gov>
Cc: Hoffer, Melissa <Hoffer.Melissa@epa.gov>; Chaudhary, Dimple <Chaudhary.Dimple@epa.gov>; Clarke, Victoria <clarke.victoria@epa.gov>; Griffo, Shannon <Griffo.Shannon@epa.gov>
Subject: an ethics welcome to Melissa Hoffer and Dimple Chaudhary

Hi there,

As you might expect, the OGC/Ethics Office is cheerfully up to our eyeballs in ethics issues for our incoming appointees. Not only are we thinking, as we always do, about financial conflicts of interest, but we are also weighing impartiality concerns with former employers and former clients, bar obligations and now an executive order on ethics commitments. We will be drafting recusal statements, but we typically wait until after we have a chance to review the financial disclosure reports. As many of you also file that wretched report, you know how much work that entails. So, before we can distribute signed recusal statements, here's how to navigate the likely recusal issues for Melissa Hoffer and Dimple Chaudhary.

MELISSA HOFFER

- Melissa is bound by her bar restrictions from sharing the confidences of her former client, the Commonwealth of Massachusetts, and from switching sides in litigation in which she previously participated or for which she provided supervision. With the attached impartiality determination, however, I authorized her to participate in making *policy* decisions about that litigation, such as whether or not to stay the proceedings. That impartiality determination included the list of cases from which she is recused because of her bar obligations. For her tenure at EPA, she will be recused from participation in these cases.
- For now and continuing for one year, she is recused from participation in any new specific party matter in which Massachusetts is a party or represents a party. Should we issue another impartiality determination, I will share that with you.

DIMPLE CHAUDHARY

- Dimple is bound by her bar restrictions from sharing the confidences of her former client, the Natural Resources Defense Council, and from switching sides in litigation in which she previously participated or for which she provided supervision or counsel. The cases from which she is recused are:

CASE NAME and/or SUBJECT MATTER	CITATION and/or DESCRIPTION:
Consent Decree Implementation of Agency's failure to issue a worst-case spill regulation for non-transportation-related-substantial-harm facilities	<i>Environmental Justice Health Alliance for Chemical Policy Reform, NRDC, et al. v. EPA</i> , Case No. 19-cv-2516, SDNY
Challenge to Methylene chloride rule	<i>Labor Council for Latin America, NRDC, et al. v. EPA</i> , Case No. 19-1042, 2d Cir.
Challenge to use of tetrachlorvinphos on pets	<i>NRDC v. Wheeler</i> , Case No. 20-72794, 9th Cir.
Provided individual counseling to plaintiffs in Flint water crisis	<i>Walters v. Flint, EPA, et al.</i> , Case No. 17-10164, E.D. Mich.

- Because Dimple's former employer is not a state or local government, she is further bound by Section 2 of the Biden Ethics Pledge. We cannot grant impartiality determinations for her. Instead, for two years, she cannot participate in any specific party matter in which NRDC is a party or represents a party. She

may not attend any meeting nor have any communication with NRDC unless the communication relates to a particular matter of general applicability and participation in the event is open to all interested parties. Dimple's recusal period with NRDC on any specific party matter (e.g., litigation, contracts, grants, speaking engagement) will last until after January 20, 2023.

If you have any questions about these general recusal areas, then please let me know.

Justina

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